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In the Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR PETITIONERS

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The opinion of the United States Court of Appeals for the Fourth Circuit filed September 30, 1975 is not yet reported and is printed as the Appendix to the Petition for Writ of Certiorari docketed on December 29, 1975. (P pp 14-21).

The Opinions and Orders of the United States District Court for the Eastern District of North Carolina, Raleigh and Washington Divisions, are unreported, and are printed as the Supplemental Appendix to the Petition for Writ of Certiorari.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Petition for Writ of Certiorari was granted April 5, 1976.

QUESTION PRESENTED

WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE THE NORTH CAROLINA DEPARTMENT OF CORRECTION TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

These three consolidated cases arose out of like claims asserted by various inmates in the custody of the North Carolina Department of Correction to the effect that, by failing to provide them with legal library facilities, the State of North Carolina was denying them reasonable access to the courts and equal protection of the laws as guaranteed by the First and Fourteenth Amendments. No regulation of the Department of Correction, nor any affirmative action taken by the Petitioners was claimed to have interfered with the prisoners' access to the courts. Rather, it was the failure of the State to adequately provide resources and assistance to prisoners that was challenged as unconstitutional. In its Answer, the Petitioners attempted to demonstrate that the State had

provided considerable legal assistance to indigents,[1] that the North Carolina Department of Correction has no regulations prohibiting mutual legal assistance, and that the State of North Carolina has extensive post conviction procedures, but upon the Respondents' Motion for Summary Judgment, the Court focused on the resources available to prisoners at the initial stage of litigation, i.e., the preparation of writs and petitions.[2] The District Court granted Summary Judgment and required the State of North Carolina to submit a proposed plan to provide adequate legal library facilities for indigent prisoners seeking to file pro se habeas corpus or civil rights actions. (Supp A pp 9-13, 29-30) The State, obedient to the Order filed a plan for legal research facilities. (Supp A pp 14-20) The plan was designed to establish 7 core libraries distributed throughout the State in a manner best suited to serve the 77 units situated in 67 different counties of North Carolina which constitute the North Carolina Department of Correction. Each core library would contain the following material:

North Carolina General Statutes
North Carolina Reports (1960-)
North Carolina Court of Appeals Reports
Strong: North Carolina Index
North Carolina Rules of Court (West)

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[1]North Carolina spent $1,962,719.59 for the appointment of counsel in 11,278 cases in the fiscal year 1971-72. The cost rose in 1972-73 when $2,454,018.00 was appropriated and $2,624,378.41 was actually spent for the appointment of counsel in 16,304 cases, an increase of 44.6% over fiscal year 1971-72. The 1973 Session of the North Carolina General Assembly appropriated $3,230,000.00 for the 1973-74 fiscal year and $3,307,340.00 was actually spent in 29,117 cases, an increase of 78.5% over fiscal year 1972-73. For the fiscal year 1974-75, the General Assembly appropriated $3,750,597.00 and $4,281,625.00 was actually spent in 32,423 cases. For the current fiscal year, 1975-76, the General Assembly has appropriated $5,596,769.00. [Annual Report of the Administrative Office of the Courts for the State of North Carolina]

[2]"In the answer filed by the defendants, great length was given to illustrate each situation in which the State presently provides counsel for indigent prisoners. Despite these efforts, however, there is no indication of any assistance at the initial stage of preparation of writs and petitions which is under consideration in this action. . . ." SMITH v. BOUNDS, mem. dec. (E.D. N.C., August 16, 1973) (Supp A at 11).

United States Code Annotated (West)
Title 18
Title 28 §§ 2241-2254
Title 28—Rules of Appellate Procedure
Title 28—Rules of Civil Procedure
Title 42 §§ 1891-2010
Supreme Court Reporter (West) (1960-)
Federal Reporter 2d (West) (1960-)
Federal Supplement (West) (1960-)
Black's Law Dictionary (West)
Sokol: Federal Habeas Corpus (Michie)
LaFave and Scott: Criminal Law Hornbook (West) (2 copies)
Cohen: Legal Research
Criminal Law Reporter (Bureau of National Affairs)
Palmer: Constitutional Rights of Prisoners

Selection of core libraries would be based upon the number of petitions filed and geographic location. Each unit would be provided with request forms for inmates to set up appointments to work in the nearest library. In most cases a full day's use would be alloted. Transportation and housing would be provided.

In addition, two smaller core libraries containing the North Carolina Statutes and treatises would be established for prisoners on indefinite non-punitive segregation at Central Prison and for the Correctional Center for Women. Inmates in these categories would request volumes from the larger libraries.

At this point the Inmates objected to the omission from the plan of independent legal counsel for the prisoners as a supplement to the library facilities proposed under the plan. The Court ordered counsel for all parties to submit briefs on the issue of whether an independent attorney's office, supplementary to the library facilities was necessary. (Supp A p 19) After consideration, the Court refused to require the State to establish an independent attorney's office (Supp A pp 21-25) and approved, with modification, the library facility plan submitted by the State obedient to the Order of the Court. (Supp

A pp 26-28) The court's modifications provided:

1. that two copies of Title 28 U.S.C.A. § 2254 and Title 42 U.S.C.A. § 1891-1984 be required for each core library; and
2. that no reporter advance sheets or volumes be discarded, in effect giving each library two volumes of each current reporter.

Both the State and the inmates appealed. The State from the order for Summary Judgment contending that it is without obligation to provide prisoners with legal research facilities or an alternative therefore, and the inmates from the Order approving, with modification, the proposed plan, because they urged such plan was inadequate. The Court of Appeals for the Fourth Circuit modified the Order so as to require a core library at the Correctional Center for Women, but otherwise affirmed. (P pp 14-21).

SUMMARY OF ARGUMENT

THE NORTH CAROLINA DEPARTMENT OF CORRECTION IS NOT CONSTITUTIONALLY OBLIGATED TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

I. PETITIONERS HAVE NOT INTERFERED WITH THE RESPONDENTS' ACCESS TO THE COURTS.

In JOHNSON v. AVERY, 393 U.S. 483 (1969), this Court noted a virtual absence of other forms of assistance which might justify a ban on mutual legal assistance among inmates and went on to examine other methods of assistance "available to provide *alternatives* if the State elects to prohibit mutual assistance among inmates." 393 U.S. at 490. Implicit in this consideration of "alternatives" is the proposition that by simply not preventing prisoners from assisting each other in writ writing a State had done what it is constitutionally required to

do in the way of not preventing access to the Courts. Furthermore, non-interference was the standard utilized by this Court in WOLFF v. McDONNELL, 418 U.S. 539 (1974) upon remand "to assess the adequacy of legal assistance where one inmate had been appointed as the only prison writ writer under the reasonable alternative test of AVERY." 418 U.S. at 580.

Because the State of North Carolina has generously funded its program of appointing counsel for indigents; has extensive post conviction procedures which also provide for the appointment of counsel for indigent defendants; does not ban mutual inmate assistance, i.e., "writ writers", of whom the Respondents are among the most prolific; and, as demonstrated in the Appendix, have not, as readily conceded by the District Court, interferred with the Respondents' access to the courts, this State should not be required to establish expensive law libraries for the 77 units which comprise the Division of Prisons of the North Carolina Department of Correction.

II. THE FAILURE OF NORTH CAROLINA TO PROVIDE EXTENSIVE LEGAL LIBRARY FACILITIES TO INDIGENT PRISONERS IS NOT A DENIAL OF EQUAL PROTECTION.

In ROSS v. MOFFIT, 417 U.S. 600 (1974), this Court considered the constitutional necessity for the appointment of counsel to seek discretionary review. Although set in a different context, the rationale of MOFFIT is equally applicable to the question of whether or not a state is required by the Constitution to furnish law libraries to prisoners. Thus, if a state is not constitutionally required to provide for appellate review nor appoint counsel for discretionary review, and is not required to equalize economic conditions or provide elective benefits, it is also not required by the Constitution to furnish law libraries to prisoners.

ARGUMENT

THE NORTH CAROLINA DEPARTMENT OF CORRECTION[3] IS NOT CONSTITUTIONALLY OBLIGATED TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

I

PETITIONERS HAVE NOT INTERFERRED WITH RESPONDENTS' ACCESS TO THE COURTS.

> "The Defendants in the present suit point out to the Court that the Plaintiffs in the present suit have filed a great many petitions and suits in this Court and in other Courts since their incarceration in the North Carolina Department of Correction.[4] This Court fully agrees that this is so, and that if volume is to be the test, these Plaintiffs are among the most prolific writ writers in the system. But this Court feels that it is not volume alone which should be used to test whether or not a prisoner is being deprived of his access to the Courts. . . ." SMITH v. BOUNDS, mem. dec., No. 3052 (E.D. N.C., Aug. 11, 1972) (Supp A p 5)

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[3]The Division of Prisons of the North Carolina Department of Correction currently has custody of approximately 13,000 prisoners. These prisoners are housed in 77 prison units situated in 67 counties. Fifteen of these units house less than 100 prisoners, fifty from 100 to 200 prisoners, and ten house over 200 prisoners. The reason for this diffusion of facilities and wide distribution of the prison population is the desire of the state to facilitate work release and other rehabilitative programs and, whenever feasible, to keep the prisoners near their families and within their home counties hopefully to aid in their subsequent successful reentry into society.

[4]For a review of the "great many petitions and suits," see Appendix hereto entitled *Respondents' Histories in the Courts*, infra, pp. 25-35.

Petitioners have not deprived the Respondents of their access to the Courts,[5] nor have they merely ignored these rights. Instead, after spending millions of dollars a year to provide professional assistance to indigents,[6] Petitioners are accused of not providing sufficient assistance.

The leading cases dealing with prisoners' rights to access to the courts have all dealt with situations in which the government, by affirmative action, has interfered with prisoners' attempts to go to court. In EX PARTE HULL, 312 U.S. 546 (1941), an inmate in a Michigan State prison attempted to petition this Court for a Writ of Habeas Corpus on the ground that he had been denied due process of law in a conviction which occurred during a probationary period following an earlier conviction, thus triggering a reinstatement of the earlier sentence. The prison forwarded the petition to a legal assistant of the parole board who returned it to the prisoner explaining that it was inadequate in that it lacked a supporting brief, verification, affidavits and other formalities. A copy which the inmate attempted to give to his father for transmittal to this Court was seized. When his father finally got a petition through, this Court struck down the regulation requiring parole board approval, holding that it was an unconstitutional restriction on the petitioner's right to apply to a federal court for a writ of habeas corpus. It is significant for this case that this Court then evaluated the merits of the petition to determine whether it required a response from the State. On the basis of the "exhibits and rather vague statements in the petition", 312 U.S. at 50, apparently prepared by Hull with no assistance or resources other than the criticism provided by the legal assistant to the parole board, this Court held that the second trial was not adequately challenged. Surely this amounts to at least a tacit recognition that, while the States are forbidden from standing in the way of a prisoner's attempt to initiate proceedings in the courts, the States' constitutional obligation to assist prisoners in their attempts in an affirmative manner is minimal at most.

[5]See fn. 4, supra.
[6]See fn. 1, supra.

In JOHNSON v. AVERY, 393 U.S. 483 (1969), a prisoner of the State of Tennessee challenged the constitutionality of a prison regulation forbidding inmates from advising or assisting other inmates in the preparation of writs or other legal matters. Emphasizing the fundamental importance of the writ of habeas corpus, this Court noted that, if assistance from "jailhouse lawyers" were denied to illiterate and indigent inmates, the effect would be that these inmates would have no access to courts to challenge the fact of their confinement. This Court noted a virtual absence of other forms of assistance which might justify the ban of mutual assistance among inmates. It is significant for this case to note that this Court went on to examine other methods of assistance, e.g., use of law students or expanded public defender programs, "available to provide *alternatives* if the State elects to prohibit mutual assistance among inmates." 393 U.S. at 490 (Emphasis added.) Implicit in this consideration of "alternatives" is the proposition that by simply not preventing prisoners from assisting each other in writ writing, a State has done what it is constitutionally required to do in the way of not preventing access to the courts.[7] Non-interference was, moreover, used by this Court in the case of WOLFF v. McDONNELL, 418 U.S. 539, 577-80 (1974), as the applicable standard. It is also significant that, in addition to the millions of dollars worth of legal assistance provided each year by the State of North Carolina to indigent criminal defendants and inmates involved in state court post conviction and habeas corpus proceedings, the North Carolina Department of Correction imposes no restrictions on inmate mutual legal assistance, i.e., "writ writers." In fact, as readily noted by the District Court, the representatives of the respondent class are several of the more prolific of North Carolina's inmate writ writers. Thus, under the necessary implication of HULL, AVERY, and WOLFF, the District Court erred in granting Summary Judgment against Petitioners in this action since the State of North Carolina has no constitutional obligation to provide law libraries to its inmates.

[7]This was recognized by Mr. Justice White in his dissenting opinion, 393 U.S. 499.

The case most directly on point for Respondents is GILMORE v. LYNCH, 319 F. Supp. 105 (N. D. Cal. 1970) (Three-Judge Court), *aff'd sub nom.* YOUNGER v. GILMORE, 404 U.S. 15 (1971). In GILMORE, California state prison inmates challenged the constitutionality of regulations limiting the legal materials available in prison libraries to Federal and State constitutions, State Penal, Welfare and Institutions, Health and Safety and Vehicle Codes; a law dictionary; a Criminal Procedure Hornbook; the California Weekly Digest; and the rules of the various courts. In addition, all additional materials had been ordered removed and destroyed. A Three-Judge Court struck down the regulations as unconstitutional and the State appealed directly to this Court. This Court decided GILMORE in a per curiam decision, the entire text of which reads as follows:

> On appeal we postponed the question of jurisdiction pending the hearing of the case on the merits. 401 U.S. 906 (1971).
>
> Having heard the case on its merits, we find this Court does have jurisdiction (ALABAMA TEACHERS v. ALABAMA PUBLIC SCHOOL AND COLLEGE AUTHORITY, 393 U.S. 400, 21 L. Ed. 2d 631, 89 S. Ct. 681 (1969)) and affirm the judgment of the District Court for the Northern District of California. JOHNSON v. AVERY, 393 U.S. 483, 21 L. Ed. 2d 718, 89 S. Ct. 747 (1969).

The ALABAMA TEACHERS case cited by this Court was relevant only to the question of jurisdiction. Therefore, the citation to AVERY constitutes the entire published reasoning of this Court on the question of the State's duty to provide adequate legal library facilities. And yet, as already demonstrated, implicit in the AVERY decision is the rule that, to fulfill its constitutional obligation not to abridge a prisoner's right to petition the government for redress of grievances, a state need only refrain from interfering with prison mutual assistance in writ writing. In WOLFF v. McDONNELL, supra,

after citing GILMORE, 418 U.S. at 578-79, this Court remanded "to assess the adequacy of legal assistance where one inmate had been appointed as the only prison writ writer under the reasonable alternative test of AVERY." 418 U.S. at 580. This seeming inconsistancy suggests that the per curiam decision in GILMORE is something less than a clear precedent to be accorded the full weight of *stare decisis.*

The very uncertainty of the law, both in terms of the specific duties imposed upon the States and in terms of the scope and theoretical justification of federal review of state prison administrative action, strongly argues in favor of a fresh evaluation of the issue and as a part of that evaluation, the reasoning of the District Court in GILMORE should be considered in determining whether the rule in that case should be applied to every prison in the nation or overruled as a mistake.

The District Court attempted to formulate a "basic test" or standard by which federal courts should judge the actions, omissions, rules and regulations of state prison officials. It came up with the following: "The asserted interest of the State in enforcing its rule is balanced against the claimed right of the prisoner and the degree to which it has been infringed by the challenged rule." 319 F. Supp. at 109. The District Court then noted the prisoners' right of access to the Courts, citing EX PARTE HULL, supra, and of equal protection of the law, citing GIDEON v. WAINWRIGHT, 372 U.S. 335 (1963) (indigent's right to have counsel appointed at trial); DOUGLAS v. CALIFORNIA, 372 U.S. 353 (1963) (indigent's right to have counsel appointed on direct appeal if state provides appellate review); GRIFFIN v. ILLINOIS, 351 U.S. 12 (1956) (indigents' right to have transcript provided free on appeal). Against these rights the District Court balanced the State's interests in economy and standardization. It held that the State's interests did not justify the infringement of the State's policy made on the prisoners' rights. The State was therefore required to provide reasonably adequate legal research facilities. Accord, GAGLIE v. ULIBARRI, 507 F. 2d 721 (9th Cir. 1974); HOOKS v. WAINWRIGHT, 457 F. 2d 502 (5th Cir. 1972); NOORLANDER v. CICCONE, 489 F. 2d 642 (8th Cir. 1973)

(only if no alternative is shown is an adequate library required). But Cf. HATFIELD v. BAILLEAUX, 290 F. 2d 632 (9th Cir. 1961); PAGE v. SHARPE, 487 F. 2d 567 (1st Cir. 1973) (county sheriff has no duty to provide books although it would be a different case if access to courts had been denied); FARRINGTON v. NORTH CAROLINA, 391 F. Supp. 714 (M.D. N.C. 1975) (no constitutional need to establish law libraries for prisoners).

The problems with this extension of equal protection theory are discussed under Section II of this Brief. The problems with access to Court theory have already been established, but may be briefly summarized. The Court's opinions in the access cases, while forbidding interference by the States with the right of prisoners to petition the courts, do not require the states affirmatively to provide assistance. Besides, the clear implication of AVERY, supra, as applied in WOLFF, supra, is that a state executes its constitutional duty, such as it is, to assist prisoners merely by not interfering with inmates assisting each other.

This doctrine accords with common sense. There is no constitutional requirement that a state provide legal assistance to indigent citizens who have not run afoul of the law. If an indigent is accused of a crime, the State is required to furnish counsel through many stages of the proceedings. North Carolina meets these constitutional requirements and goes even further by providing counsel in situations where it is not constitutionally required.[8] There is no constitutional requirement that a state

[8] §7A-451. *Scope of entitlement.*—(a) An indigent person is entitled to services of counsel in the following actions and proceedings:
(1) Any case in which imprisonment or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
(3) A post-conviction proceeding under Chapter 15 of the General Statutes;
(4) A hearing for revocation of probation, if confinement is likely to be adjudged as a result of the hearing;
(5) A hearing in which extradition to another state is sought;
(6) A proceeding for judicial hospitalization under Chapter 122, Article 7 (Judicial Hospitalization) or Article 11 (Mentally Ill Criminals), of the General Statutes and a proceeding for involuntary commitment to a treatment facility under Article 5A of Chapter 122 of the General Statutes;
(7) A civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

provide a complete range of legal services to indigents and to hold that a duty to provide general legal services to indigents results whenever the State imprisons an indigent would be to reward criminals for their crimes, thus undermining the deterrence theory of punishment. It would also unreasonably interfere with the State's efforts to deal with the gargantuan problem of crime and rehabilitation. The State's resources, especially at the present time, are sharply limited; therefore, the allocation of large sums of money to create law libraries necessarily detracts from what the General Assembly of North Carolina and the North Carolina Department of Correction no doubt consider more valuable programs. Furthermore, an example of how invidious is the holding of the lower courts is the fact that it discourages states from decentralizing and reducing the size of their prisons. If this Court holds that States must affirmatively provide prisoners with such expensive, yet nonessential services such as well-equipped law libraries, the States will be forced to think twice before opening numerous small facilities designed, such as in the State of North Carolina, to keep prisoners as close as possible to family and community where rehabilitation can most easily be accomplished.

Furthermore, as will be brought out more fully in the equal protection argument, the federal courts do not sit as co-administrators of state prisons. They are not required, nor even empowered, to weigh the State's interests against the individual's

(9) A hearing for revocation of parole at which the right of counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;
(10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes; and
(11) Chapter 108, Article 4, of the General Statutes.
(b) In each of the actions and proceedings enumerated in subsection (1) of this section, entitlement to thd services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:
(1) An in-custody interrogation;
(2) A pretrial identification procedure which occurs after formal charges have been preferred and at which the presence of the indigent is required;
(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;
(4) A preliminary hearing;
(5) Trial and sentencing; and
(6) Review of any judgment or decree pursuant to G.S. 7A-27, G.S. 7A-30(1), G.S. 7A-30(2), and G.S. 15-222.

rights to determine the best accomodation of these often conflicting interests. That is the state prison administrator's job. The federal courts sit only to review the official's initial determination for constitutional error. It is therefore respectfully submitted that North Carolina's initial decision of how to assist its indigent prisoners in the courts (which includes appointment of counsel on direct appeals, in habeas corpus, in post conviction, upon certiorari to the North Carolina Court of Appeals from the denial of post conviction relief, as well as non-interference with mutual inmate assistance, and the creation of an Inmate Grievance Commission, N.C. G.S. 148-101, et seq.) is eminently reasonable.[9] The District Court therefore abused its discretion and indeed exceeded its powers when it puts itself in the place of the administrators, analyzing the entire situation in intricate detail, and issuing most detailed of orders to Petitioners.[10]

Recent decisions to this Court indicate that it is not a simple weighing of the State's interests against the inmate's rights that federal courts must undertake. In PROCUNIER v. MARTINEZ, 416 U.S. 396, 420 (1974) this Court stated:

> [P]rison administrators are not required to adopt every proposal that may be thought to facilitate prisoner access to the courts. The extent to which that right is burdened by a particular regulation or practice must be weighted against the legitimate interest of penal administration and the proper regard that judges should give to the expertise and discretionary authority of correctional officials.

[9]The State of North Carolina has established a complete procedure for collateral review of convictions, N.C. G.S. 15-217, et seq., Post Conviction Hearing Act, which provides for the appointment of Counsel, N.C. G.S. 15-219. See, also, N.C. G.S. 7A-451(a) (3). (See fn. 8, supra.) The appointment of counsel continues through the filing of the petition for writ of certiorari in the North Carolina Court of Appeals to review the judgment of the post conviction court. N.C.G.S. 15-222. See, also N.C.G.S. 7A-451(b) (6).

[10]Consider, for example, the District Court's second modification of the proposed plan. Under this provision, the District Court has, under threat of its awesome contempt power, forbidden any prison official from ever discarding any advance sheet volume of any of the reports required to be maintained in the libraries. Because the printed advance sheets will inevitably begin to fall apart and will be of no use to anyone, this Order is patently unreasonable.

What is missing from the GILMORE decision and the lower court decisions in this case is any "proper regard that judges should give to the expertise and discretionary authority of correctional officials."

Again, in PELL v. PROCUNIER, 417 U.S. 817 (1974), this Court, there dealing with state prisoners' freedom of expression in the context of prison regulations that severely inhibited the ability of the news media to interview prisoners, said of the prison's efforts to reconcile prisoners' First Amendment rights with the needs of the institution for security and discipline:

> "So long as reasonable and effective means of communication remain open and no discrimination in terms of content is involved, we believe that, in drawing such lines, prison officials must be accorded great latitude. CRUZ v. BETO, 405 U.S. 319 at 321." 417 U.S. at 818

The justification for this great deference was best expressed by this Court in PREISER v. RODRIQUEZ, 411 U.S. 475, 491-92 (1973):

> It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.

Fundamental notions of federalism and federal-state comity, therefore, place a heavy restraint on the vast equity powers of the United States Courts whenever the propriety of state actions, especially with regard to state prisons, is challenged before them. Thus, the federal courts should not engage in a full scale de novo reevaluation of prison problems whenever prisoners complain about the administrative response to those problems; rather, they should reevaluate the administrators response itself, according that response great latitude. It is submitted that the District Court and the Court of Appeals in this case gave no latitude whatsoever to the state, ignoring the state's showing that it had

done much in the way of assisting indigents in the courts, and defining the library materials it found to be desirable down to the exact number of copies of the Habeas Corpus Statute to be maintained. The state respectfully objects to this unwarranted intrusion by the federal government into its province and urgently requests this Court to restrain the lower federal courts from further attempts to participate so intimately in state penal affairs.

No doubt, courts receiving inartfully drawn petitions have yearned for the pen to be held by a legal scholar; however, this is not a sufficient reason to establish law libraries in prisons. This proposition does not realistically appraise their use by numbers, effect or subject, nor are they needed or constitutionally required. Although the District Court, in tracking the language of GILMORE v. LYNCH, supra, stated that:

> . . . This court takes notice that more than mere facts are necessary in order to file a Petition for Relief by way of habeas corpus, for example. A prisoner should note the rules concerning venue, exhaustion of remedies, jurisdiction, and proper parties respondent. All too often, such points are raised in the respondents' brief and answer, and the prisoner, who had no way of realizing his initial mistakes, is left with the task of filing a traverse to the cited authority which he has no means of obtaining. He should know which facts are significant to the Court, and which facts are unnecessary and confusing. (Supp. App. pp 4,5)

It is interesting to note that this is the opposite of the position taken by Mr. Justice White in his dissenting opinion in JOHNSON v. AVERY, supra:

> Habeas Corpus petitions, as the majority notes, are relatively easy to prepare: they need only set out the facts giving rise to a claim for relief and the judge will apply the law appointing a lawyer for the prisoner and giving him a hearing when appropriate. This fact does not buttress the unregulated jailhouse lawyer, but undermines it. To the extent that it is easy to state a claim, any prisoner can do it and need not submit to the mercies of a jailhouse lawyer . . .[11]

Those of us who work with prisoners petitions know that they are written by only a small number of inmates for a very small number of the prison population. Therefore, the number of inmates who would benefit from the establishment of law libraries, assuming for the moment, that there might be some benefit, would be miniscule.

The establishment of prison law libraries will not contribute to rehabilitation and will not enure to the benefit of anyone or the institution. Accepting this premise, the probable result of the establishment of prison law libraries will not result in a benefit to society.

Law is not a science, and highly educated, devoted judges and practicing attorneys sometimes find it difficult to read a statute, a legal treatise or an opinion and determine its precise meaning.

> Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited. . . . JOHNSON v. AVERY, supra, at 487.

It is respectfully submitted that the tools of the trade of the legal profession, if furnished to prison inmates, would be placed in the hands of individuals ill equipped to use them.

II

THE FAILURE OF NORTH CAROLINA TO PROVIDE EXTENSIVE LEGAL LIBRARY FACILITIES TO INDIGENT PRISONERS IS NOT A DENIAL OF EQUAL PROTECTION.

In ROSS v. MOFFITT, 417 U.S. 600 (1974), this Court considered the constitutional necessity of the appointment of counsel to seek discretionary review. Although set in a different

[11] According to the 1975 Annual Report of the Director of the Administrative Office of the United States Courts, state court prisoner filed 7,843 habeas corpus petitions in the United States District Courts, 275 of which were filed in the United States District Courts for the State of North Carolina. In 1974, 275 habeas corpus were also filed by State prisoners in the United States District Courts for the State of North Carolina.

context, the rationale of MOFFITT is equally applicable to the question of whether or not a state is required by the constitution to furnish law libraries to prisoners.

> Despite the tendency of all rights "to declare themselves absolute to their logical extreme", there are obviously limits beyond which the equal protection analysis may not be pressed without doing violence to the principles recognized in other decisions of this Court. The Fourteenth Amendment "does not require absolute equality or precisely equal advantages."

In MOFFITT, Justice Rehnquist quoted from DOUGLAS v. CALIFORNIA, 372 U.S. 353 (1963):

> . . . But it is appropriate to observe that the state can, consistently with the Fourteenth Amendment, provide for differences so long as the result does not amount to the denial of due process or an "invidious discrimination". Absolute equality is not required; lines can be and are drawn and we often sustain them.

After recounting the necessity for counsel at the trial stage required by the due process clause, Mr. Justice Rehnquist wrote:

> By contrast, it is ordinarily the defendant, rather than the state who initiates the appellate process, seeking not to fend off efforts of the State's prosecutor but rather to overturn a finding of guilt made by a judge or jury below. The defendant needs an attorney on appeal not as a shield to protect him against being "hailed into court" by the state and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt. This difference is significant for while no one would agree that the state may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the state need not provide any appeal at all. The fact that an appeal has been provided does not automatically mean that a state then acts unfairly by refusing to provide

> counsel to indigent defendants at every stage of the way. Unfairness results only if indigents are singled out by the state and denied meaningful access to that system because of their poverty. . . .

Finally, the Court wrote:

> The fact that a particular service might be of benefit to an indigent defendant does not mean the service is constitutionally required. The duty of the state under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly. . . .

Petitioners submit that North Carolina has also been "fair," the appropriate standard in these cases, with respect to the preparation of writs. Furthermore, it is respectfully submitted that if a state need not provide an appeal nor provide counsel for discretionary review, if the state is not required to equalize economic conditions and is not mandated to provide elective benefits, it is not required by the Constitution to furnish law libraries to prisoners.

It is also of interest to note of ROSS v. MOFFITT, supra, that it examined the state's obligation to provide counsel to prisoners seeking relief created by federal statutes and provided by federal courts. The Court noted that DOUGLAS had been based on the reasoning that a state did not have to provide any appeal to a criminal defendant, but that if it did, it was constitutionally required to provide it equally to rich and poor alike. It then noted that a state prisoner's desire to seek a remedy provided not by the state but by the federal government was altogether different from the desire to exhaust state remedies so far as the state's duty with respect to providing counsel is concerned:

> The suggestion that a state is responsible for providing counsel to one petitioning this Court simply because it

> initiated the prosecution which led to the judgment sought to be reviewed is unsupported by reason or authority. It would be quite as logical under DOUGLAS and GRIFFIN, and indeed, perhaps more so, to require that the federal government or this Court furnish and compensate counsel for petitioners who seek certiorari here to review state judgments of conviction. Yet this court has followed a consistent policy of denying applications for appointment of counsel . . . [I]t would be odd indeed to read the Fourteenth Amendment to impose such a requirement on the States, and we decline to do so. 417 U.S. 617-18.

Although this Court was discussing certiorari relief, the force of its logic applies equally to federal habeas corpus and civil rights relief. Insofar as Respondents argue that the State must assist its prisoners in the preparation of writs to be filed in federal courts, ROSS v. MOFFITT authoritatively rejects their argument. Furthermore, if the State's failure to appoint counsel to the indigents to aid in writ writing is not a denial of equal protection, then *a fortiori* the mere failure to provide legal materials is not such a denial.

The remarks of Chief Justice Burger, concurring in CRUZ v. BETO, 405 U.S. 319 (1972), are also informative in delineating the scope of rights afforded to state prisoners under the equal protection clause of the Fourteenth Amendment. In CRUZ, a Buddhist inmate alleged denial of equal protection on the grounds that, while prisoners could attend Protestant, Catholic, or Jewish religious services and were rewarded through the prison merit system for doing so, the prison apparently discouraged him from the practice of his religion. Concurring in this Court's judgment that the State had to provide a reasonable opportunity for inmates to practice their religious beliefs, the Chief Justice noted:

> There cannot possibly be any constitutional or legal requirement that the government provide materials for every religion and sect practiced in this diverse country. At most, Buddhist materials cannot be denied to prisoners if someone offers to supply them. 405 U.S. at 323.

These remarks have their analogue in the right of access to the courts area in the notion that a state is forbidden to interfere with a prisoner's attempt to go to court but has no affirmative duty to take him there. Thus, the authoritative reasoning of this Court rejects Respondents' claim that the State has deprived indigents of equal protection of the law.

Finally, to hold that a state is constitutionally mandated to guarantee access to the courts by furnishing law libraries to prisoners is inconsistent with facts. Obviously, expertise is not required.[12] In McCRAY v. BURRELL, 367 F. Supp. 1191 (D. Md. 1973), rev'd, 516 F. 2d 357 (4th Cir. 1975), cert. granted, No. 75-44 (U.S., November 3, 1975), Chief Judge Northrop wrote:

> A look at the Annual Report of the Director of the Administrative Office of the United States Courts for the fiscal year ending June 30, 1972 and the semi-annual report of the Director for the first half of fiscal year 1973, lend statistical evidence to our conviction that there is little hope of relief from the swelling ranks of petitioning prisoners. At the appellate level, nearly 31% of the prisoner appeals filed nationwide were filed in the United States Court of Appeals for the Fourth Circuit for fiscal year 1972. This percentage rose to 36.1% during the first half of 1973. More importantly, prisoner cases accounted for 38% of the cases filed with the Fourth Circuit in 1972, and 45.3% for for the first part of 1973.[13]

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[12]See, JOHNSON v. AVERY, supra.

[13]According to the 1975 Annual Report of the Director of the Administrative Office of the Courts, State court prisoners in the Fourth Circuit filed 1,047 habeas corpus petitions and 1,184 civil rights petitions in the United States District Courts. Of the total, 275 habeas corpus petitions and 302 civil rights complaints were filed by state court prisoners in the United States District Courts for the Eastern, Middle and Western Districts of North Carolina. In other words, out of the total 1,412 private civil filings in the United States District Courts for the State of North Carolina during 1975, 579 (including 2 listed as mandamus and other) were filed by state court prisoners. By comparison, the national total was 85,541 private civil actions filed, of which 14,260 were state court prisoner petitions, an increase of 900 over 1974 or a 17% increase for the year. Nationally, prisoner petitions have represented approximately 18% of the total civil cases filed in the United States District Courts; however, in 1975 state court prisoner filings represented 41% of all private civil cases in North Carolina.

The North Carolina Department of Correction does not prohibit inmates from preparing writs for others. Therefore, it should not be required to establish law libraries with the collateral hazards of furnishing "adequate" law libraries, with "adequate" access, with "adequate" circulation and "adequate" replacement procedures.

CONCLUSION

The concept of "free access" to the Courts does not justify the establishment of extensive legal research facilities making available to untrained individuals with neither an understanding nor respect for the law, resources not readily available to the greater percentage of attorneys practicing in the State of North Carolina. Furthermore, the State of North Carolina has not yet found itself financially able to provide such extensive legal research facilities to either the Judges of our District or Superior Courts or the District Attorneys of this State. And, in the current economy, the cost of installation and maintenance of such facilities which are unavailable to the majority of the attorneys and the members of the judiciary of the State of North Carolina except if they travel to use the libraries of the various law schools in this State or the library of the Supreme Court of North Carolina, would of necessity result in a diversion of resources critically needed by the Division of Prisons. "Some state. . . . may conceivably find that other claims for public funds within or without the criminal justice system preclude the implementation of such a policy at the present time. . . ." ROSS v. MOFFITT, supra at 618.

Finally, in light of Respondents' histories in the courts[14] and North Carolina's generous funding of G.S. 7A-450, *Entitlement of Indigent Persons Generally*,[15] which for the current fiscal year is $5,596,769.00, it is appropriate to consider Judge Campbell's admonition that some courts have raced "headlong into the breech in a seemingly frantic effort to prove more royal than the king." Campbell, William J., Delays In Criminal Cases, 55 F.R.D. 229, 238 (1972).

[14]See, Appendix, *Respondents' Histories in the Courts*, infra at p 25.

[15]See fn. 1, supra.

For the foregoing reasons, we respectfully submit that this case should be reversed and remanded to the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted.

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Appendix

RESPONDENTS' HISTORIES IN THE COURTS[1]

TURNER, etc., v. MORGAN, et al.

No. 4277—Raleigh (E.D. N.C.)
No. 74-2379 (4th Cir.)

1. *Donald W. Morgan:*

Donald W. Morgan is a "writ writer." See, for example, the pleadings filed in BRADFORD v. WEINSTEIN, 357 F. Supp. 1127 (E.D. N.C. 1973), rev'd, 519 F. 2d 728 (4th Cir. 1974), dismissed as moot, ___ U.S. ___ (1975), prepared by "Donald W. Morgan, Prisoner Legal Assistant, Post Office Box 137, Tillery, North Carolina 27887 for the Plaintiffs," or, in fact, the pleadings filed in this case by these Plaintiffs which are similarly captioned.

Morgan was extradited from the State of South Carolina to stand trial upon charges pending in the Rutherford County (N.C.) Superior Court. On May 14, 1969, the Honorable W. K. McLean, Judge of the Superior Court of North Carolina, appointed Hollis M. Owens, Jr., Esq., as Morgan's counsel. On October 7, 1969, counsel prepared and filed a Writ of Habeas Corpus on Morgan's behalf in the North Carolina Superior Court, and on October 7, 1969, the Honorable P. C. Froneberger, Judge of the Superior Court of North Carolina,

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[1]The Respondents' histories conclude with the filing of the Complaint in each case.

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Leave to Proceed in Forma Pauperis was granted April 4, 1973, in MORGAN v. TURNER, supra, and the Complaint was served on the Defendants on April 19, 1973.

In SMITH v. BOUNDS, supra, Leave to Proceed in Forma Pauperis was granted on May 25, 1972, and the Defendants were served May 26, 1972.

In HARRINGTON v. HOLSHOUSER, supra, Leave to Proceed in Forma Pauperis was allowed February 23, 1973, and the Defendants were served on March 1, 1973.

directed that a Writ of Habeas Corpus issue and that Morgan be brought before the Honorable Lacy H. Thornburg, Judge of the Superior Court of North Carolina, on October 13, 1969. At the bail reduction hearing, at which Morgan was represented by counsel, Judge Thornburg refused to reduce the bail. Thereupon, Morgan's court appointed counsel, Hollis M. Owens, Jr., Esq., filed a Petition for Writ of Certiorari in the North Carolina Court of Appeals to review Judge Thornburg's Order finding that bail in the amount of Twenty Thousand Dollars ($20,000.00) was not excessive. By Order dated November 20, 1969, the North Carolina Court of Appeals denied the Petition for Writ of Certiorari. *In the Matter of the Imprisonment of Donald Morgan*, No. 69SC417PC. Morgan then presented two applications for Habeas Corpus to the United States District Court for the Eastern District of North Carolina which were denied by Chief Judge Butler on January 8, 1970. MORGAN v. BOUNDS, Civil No. 2496—Raleigh (E.D. N.C. January 12, 1970). On February 3, 1970, Morgan filed Notice of Appeal and by Memorandum Decision dated April 6, 1971, the Fourth Circuit Court of Appeals affirmed the dismissal. MORGAN v. BOUNDS, mem. dec., No. 14,442 (4th Cir., April 6, 1971). Morgan was brought to trial at the March 1970 Criminal Session of the Rutherford County Superior Court while represented by Hollis M. Owens, Jr., Esq., court appointed counsel. From his convictions, Morgan appealed to the North Carolina Court of Appeals, while represented by court appointed counsel, Hollis M. Owens, Jr., Esq. The North Carolina Court of Appeals affirmed his convictions. STATE v. MORGAN, 9 N.C. App. 624, 175 S.E. 2d 294 (1970), cert. denied, 277 N.C. 458 (1971). Morgan subsequently filed a Petition for Post Conviction Review and James M. Bowen, Esq., was court appointed to represent Morgan in the proceedings. On November 5 and 10, 1971, Morgan was provided with a post conviction hearing before the Honorable Sam J. Ervin, III, Judge of the Superior Court of North Carolina. Morgan gave Notice of Appeal and on November 19, 1971, the Court reappointed James M. Bowen, Esq., to perfect Morgan's appeal to the North Carolina Court of Appeals. On January 24, 1972,

James M. Bowen, Esq., court appointed counsel, filed a Petition for Writ of Certiorari on Morgan's behalf in the North Carolina Court of Appeals. By Order dated February 3, 1972, the Court of Appeals denied the Petition. MORGAN v. STATE, No. 72SC29PC. On January 9, 1973, Morgan filed a new Petition for Post Conviction Hearing which was denied without hearing by Order of Honorable Lacy H. Thornburg on January 12, 1973. On March 12, 1973, J. H. Burwell, Jr., Esq., filed a Petition for Writ of Certiorari on Morgan's behalf in the North Carolina Court of Appeals. By Order dated March 27, 1973, the North Carolina Court of Appeals denied the application for Writ of Certiorari. MORGAN v. STATE, No. 73SC67PC.

In addition to the foregoing, see, also, MORGAN v. BOUNDS, Civil No. 2562—Raleigh (E.D. N.C., March 28, 1972); MORGAN v. NORTH CAROLINA, Civil No. 2699—Raleigh (E.D. N.C., December 30, 1971); and MORGAN v. O'NEAL, Civil No. 2702—Raleigh (E.D. N.C., August 17, 1971). Additionally, see, also, MORGAN v. ELLIOT, etc., et al., Civil No. 3293—Asheville (W.D. N.C.) and MORGAN v. HUSKEY, etc., et al., Civil No. 3181—Asheville (W.D. N.C.).

2. *Franklin D. Strader*:

Franklin Delano Strader was charged with Larceny and Murder in warrants issued on February 19, 1969, and with Robbery with Firearms by warrant issued March 17, 1969. On February 21, 1969, the Honorable Allen H. Gwynn appointed Robert R. Blackwell, Esq., to represent Strader. On March 17, 1969, a preliminary hearing was held in the Caswell County Recorder's Court, at which time the State nol prossed the larceny charge and probable cause was found on the Murder and Armed Robbery charges.

At the March 24, 1969 Session of the Caswell County Superior Court, the Grand Jury returned a Bill of Indictment charging Strader with First Degree Murder. On March 25, 1969, Strader, while represented by court appointed counsel, tendered a plea of guilty to Murder in the Second Degree and was sentenced to a term of not less than twenty-five (25) nor more

than thirty (30) years. An appeal was not taken from the conviction.

On May 28, 1969, Strader filed an application for Post Conviction Hearing in the Caswell County Superior Court. On August 21, 1969, D. E. Scarborough, Esq., was court appointed to represent Strader when the matter came on for hearing in Yanceyville, North Carolina, out of term before the Honorable Allen H. Gwynn, Resident Judge, on September 8 and 11, 1969. Judge Gwynn entered a Judgment denying and dismissing the Petition on October 31, 1969. Melzer A. Morgan, Jr., Esq., was court appointed on Janurary 19, 1970, to represent Strader upon a Petition for Writ of Certiorari to the North Carolina Court of Appeals. The Petition was filed on Strader's behalf on March 16, 1970, which upon answer by the State, was denied by Order of the Court in conference on April 3, 1970. STRADER v. STATE, No. 70SC94PC, Spring Session, 1970. On July 3, 1970, Melzer A. Morgan, Jr., Esq., filed a Petition for Writ of Certiorari on Strader's behalf in the Supreme Court of the United States. STRADER v. NORTH CAROLINA, No. 5499, October Term, 1970. The Petition for Writ of Certiorari was denied November 16, 1970. STRADER v. NORTH CAROLINA, 400 U.S. 919, 91 S. Ct. 178, 27 L. Ed. 2d 159 (1970).

On June 11, 1970, Strader submitted for filing in the United States District Court for the Middle District of North Carolina a Petition for Writ of Habeas Corpus which was denied by Memorandum Opinion and Order filed May 26, 1971. STRADER v. POTEAT, et al., No. C-120-G-70 (M.D. N.C., May 26, 1971).

On May 19, 1970, Melzer A. Morgan, Jr., Esq., was appointed by the Honorable James M. Long to represent Strader "through any further proceedings in this matter." On September 11, 1970, before the Supreme Court of the United States had passed upon his Petition for Writ of Certiorari, Strader filed an application for a Writ of Error "Coram Nobis", praying that his original sentence be vacated and that he be granted a new trial. By Judgment dated March 24, 1971, the Honorable Thomas W. Seay, Jr., Judge Presiding, denied relief. On May 21, 1971, Melzer A. Morgan, Jr., Esq., court appointed counsel, filed a Petition for Writ of Certiorari on Strader's behalf in the North Carolina Court of Appeals seeking to review the Judgment entered March 24, 1971, by Judge Seay denying relief. By Order of the Court in conference on June 4, 1971, the North Carolina Court of Appeals denied the Petition for Writ of Certiorari. STRADER v. STATE, No. 71SC177PC, Spring Term, 1971. On September 2, 1971, Melzer A. Morgan, Jr., Esq., court appointed counsel, filed yet another Petition for Writ of Certiorari in the Supreme Court of the United States. STRADER v. NORTH CAROLINA, No. 71-5372, October Term, 1971. The Petition for Writ of Certiorari was denied December 14, 1971. STRADER v. NORTH CAROLINA, 404 U.S. 993, 92 S. Ct. 542, 30 L. Ed. 2d 545 (1971).

On November 26, 1971, Strader filed a ten page typewritten pro se Petition for Writ of Certiorari in the North Carolina Court of Appeals seeking to review an Order entered June 25, 1971, by the Honorable Thomas W. Seay, Jr., Judge Presiding, denying yet another Petition for Post Conviction Relief dated June 14, 1971. The Petition for Writ of Certiorari was denied by the North Carolina Court of Appeals on December 8, 1971. STRADER v. STATE, No. 71SC350PC, Fall Session, 1971.

On May 17, 1972, Strader filed an eleven page pro se Application for Writ of Habeas Corpus in the Supreme Court of North Carolina which was dismissed by Order of the Court in conference on May 24, 1972. STRADER v. BOUNDS, No. 93PC, Spring Term, 1972.

On December 3, 1971, Strader filed a "Petition for Mandamus to Invalidate Sentence in Case No. 2304, in Forma Pauperis." On December 22, 1971, he also filed a "Motion to Supplement Petition for Mandamus, and/or Application for Writ of Habeas Corpus in Forma Pauperis." On January 10, 1972, he filed a "Motion in Arrest of Judgment Case No. 2304." By Order dated March 24, 1972, Strader's applications for relief dated December 3 and 22, 1971, and January 10, 1972, were denied. By Order dated May 17, 1972, Melzer A. Morgan, Jr., Esq., was court appointed to represent Strader upon his Petition for Writ of Certiorari to the North Carolina Court of Appeals. On July 17, 1972, Melzer A. Morgan, Jr., Esq., court appointed counsel,

filed a Petition for Writ of Certiorari on Strader's behalf which was denied by the North Carolina Court of Appeals on August 1, 1972. STRADER v. STATE, No. 72SC242PC.

In addition to the foregoing, see, also, STRADER v. BOUNDS, Civil No. 2927—Raleigh (E.D. N.C., April 7, 1972). In the United States District Court for the Middle District of North Carolina Strader has filed the following:

STRADER v. SCOTT, Civil No. C-19-G-72
(M.D.N.C., July 10, 1972); and
STRADER v. LONG, Civil No. C-94-G-72
(M.D.N.C., July 10, 1972), aff'd,
STRADER v. LONG, mem. dec., No. 72-1872
(4th Cir., March 8, 1973).

Furthermore, in STRADER v. SCOTT, supra, a Civil Action in which Strader was attempting to declare the North Carolina Public Defender Statute unconstitutional because it makes no provision for the Public Defender System in the 17th Judicial District, the district in which he was convicted, the Court found that the State of North Carolina paid the following fees for Strader's representation up to that time:

DATE	ATTORNEY	AMOUNT
April 16, 1969	R. R. Blackwell	$ 200.00
September 29, 1969	B. E. Scarborough	250.00
April 26, 1971	M. A. Morgan, Jr.	100.00
December 30, 1971	M. A. Morgan, Jr.	463.57
January 10, 1972	M. A. Morgan, Jr.	516.84
	TOTAL	$1,530.41

3. *John Henry Russell*:

John Henry Russell was charged with Forgery and Uttering and George Burke, Esq., was court-appointed to represent him upon the charges in the Rowan County Superior Court. At the February 1972 Term, while represented by court appointed

counsel, Russell was convicted of two counts of uttering and thereupon gave Notice of Appeal to the North Carolina Court of Appeals. George L. Burke, Jr., Esq., was reappointed to represent Russell on appeal and in STATE v. RUSSELL, 15 N.C. App. 594, 190 S.E. 2d 414 (1972), the North Carolina Court of Appeals affirmed his conviction. Thereupon, while represented by court appointed counsel, Russell appealed the decision of the North Carolina Court of Appeals to the Supreme Court of North Carolina. On November 15, 1972, the Supreme Court of North Carolina filed its Opinion affirming the decision of the Court of Appeals. STATE v. RUSSELL, 282 N.C. 240 (1972). In addition to the foregoing, while his conviction was on appeal, Russell filed an application seeking a reduction in the amount of the appearance bond and George L. Burke, Jr., Esq., was court appointed to represent Russell at the bond reduction hearing. On January 19, 1973, Russell filed an Application for Writ of Habeas Corpus in the Rowan County Superior Court which was denied by Order filed January 24, 1973 by the Honorable Thomas W. Seay, Jr., Judge Presiding.

BOUNDS, etc., et al., v. SMITH, et al.

No. 3052—Raleigh (E.D. N.C.)
No. 74-2378 (4th Cir.)

1. *Robert (Bobby) Smith*:

At the April 1970, Criminal Session of the Anson County (N.C.) Superior Court, Robert (Bobby) Smith was found guilty after a jury trial on a charge of attempted armed robbery. Appeal was unsuccessful, STATE v. SMITH, 278 N.C. 476, 180 S.E. 2d 7 (1971). Smith was represented by court appointed counsel, F. O'Neil Jones, Esq., both at trial and on appeal.

Since Robert (Bobby) Smith's conviction, he has filed the following in the United States District Court for the Eastern

District of North Carolina:

ROBERT (BOBBY) SMITH v. V. L. BOUNDS, etc., et al., Civil No. 2650—Raleigh (E.D. N.C. June 8, 1972), aff'd, No. 72-2387 (4th Cir. November 27, 1972);

ROBERT (BOBBY) SMITH v. NORTH CAROLINA, Civil No. 2652—Raleigh (E.D. N.C. March 5, 1971);

ROBERT (BOBBY) SMITH v. V. L. BOUNDS, etc., et al., Civil No 2653—Raleigh (E.D. N.C. March 11, 1971);

ROBERT (BOBBY) SMITH v. ROBERT W. SCOTT, etc., et al., Civil No. 2791—Raleigh (E.D. N.C. April 29, 1974);

ROBERT (BOBBY) SMITH v. V. LEE BOUNDS, etc., et al., Civil No. 2886—Raleigh (E.D. N.C. April 7, 1972); and

ROBERT (BOBBY) SMITH v. VERNON LEE BOUNDS, etc., et al., Civil No. 2914—Raleigh (E.D. N.C. March 14, 1972), aff'd No. 73-1658 (4th Cir. June 8, 1973).

In the United States District Court for the Western District of North Carolina, Charlotte Division, Robert (Bobby) Smith has also filed the following proceedings:

ROBERT (BOBBY) SMITH v. EDDIE PRIVETT, Civil No. 2715—Charlotte;

ROBERT (BOBBY) SMITH v. RALPH ALLEN, et al., Civil No. 2716—Charlotte;

ROBERT (BOBBY) SMITH v. STANLEY BLACKLEDGE AND THE STATE OF NORTH CAROLINA, Civil No. 2907—Charlotte, aff'd, No. 72-2381 (4th Cir. June 21, 1973); and

ROBERT (BOBBY) SMITH v. DOCTOR STANLEY BLACKLEDGE, Civil No. 2848—Charlotte.

In addition to the foregoing, he has also filed various petitions in the Supreme Court of North Carolina, including:

ROBERT (BOBBY) SMITH v. DR. STANLEY BLACKLEDGE, No. 42PC, Spring Term, 1972; and

ROBERT (BOBBY) SMITH v. NORTH CAROLINA, No. 127PC, Spring Term, 1970.

The Petitions he has filed in the various Superior Courts in the State of North Carolina are too numerous to mention.

2. *Ronald D. Carnes*:

Robert D. Carnes filed a civil proceeding in the United States District Court for the Middle District of North Carolina—Greensboro Divison, CARNES v. BLACKLEDGE, No. D-275-G-71 (M.D. N.C. 1971) and in the United States District Court for the Eastern District of North Carolina, CARNES v. GARRISON, Civil No. 2978—Raleigh (E.D. N.C.).

3. *Richard A. Carter*:

Richard A. Carter has filed an "Application for Writ of Habeas Corpus Subpoena Decus Tacem Court Order in Forma Pauperis" in the Forsyth County Superior Court, RICHARD ALLEN CARTER v. THE CLERK OF FORSYTH COUNTY SUPERIOR COURT, WINSTON-SALEM, N.C.

4. *Bradford Mizell Lilley*:

Bradford Mizell Lilley was a safekeeper committed to the custody of the North Carolina Department of Correction pending appeal from his conviction of assault with a deadly weapon, with intent to kill, inflicting serious injury, imposed at the February 4, 1972 Session of the Guilford County Superior Court. Lilley was represented at trial in the Guilford County Superior Court, upon appeal to the North Carolina Court of Appeals, and upon Petition for Writ of Certiorari to the Supreme Court of North Carolina, by the Public Defender for the Eighteenth Judicial District of North Carolina. STATE v. JENNINGS, LILLEY AND MEDLEY, 16 N.C. App. 205, 192 S.E. 2d 46 (1972), cert. denied, 282 N.C. 428 (1972).

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According to the Affidavit filed herein by S. B. O'Neal, Correctional Officer in charge of the Writ Room at North Carolina Central Prison:

That the Plaintiff, Robert (Bobby) Smith, has submitted 59 petitions since being located at Central Prison, 9 of which were handwritten. That Plaintiff, Richard A. Carter has submitted 2 petitions since being located at Central Prison. That Plaintiff, Ronald D. Carnes, has submitted 7 petitions, 1 handwritten, since being located at Central Prison. That Plaintiff, Bradford Lilley, has submitted 6 petitions since being located at Central Prison.

HOLSHOUSER, etc., et al. v. HARRINGTON, et al.

No. 790—Washington (E.D.N.C.)
No. 74-2380 (4th Cir.)

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1. *John Harrington*:

Immediately subsequent to filing the Complaint in this civil action, HARRINGTON, et al., v. HOLSHOUSER, etc., et al., Civil No. 790—Washington (E.D. N.C.), Harrington filed on March 2, 1973 a civil action in HARRINGTON v. HOLSHOUSER, etc., et al., Civil No. 791—Washington, (E.D. N.C.), contending that his disciplinary conviction for possession of a dangerous weapon violated the requirements of due process. See, also, "Application fro Writ of Habeas Corpus—In Forma Pauperis" filed by Plaintiff Harrington in MARSHBURN AND HARRINGTON v. M. S. LEE, et al.,

2. *Ray Forbes*:

Ray Forbes was convicted March 2, 1972, in the Wayne County (N.C.) Superior Court of assault with a deadly weapon and sentenced to a term of two years in the custody of the North Carolina Department of Correction. On March 7, 1972, he filed a Motion to Dismiss Indictment in the North Carolina Court of Appeals, FORBES v. STATE, No. 72SC78P, and on March 22, 1972, he filed a Petition for Writ of Certiorari in the Supreme Court of North Carolina, FORBES v. NORTH CAROLINA, No. 54PC. On March 29 and April 19, 1972, he

filed Motions for Plenary Hearing to Set Bail in the Wayne County Superior Court. He also filed a Motion for Speedy Trial on December 13, 1972, in the Wayne County Superior Court. On February 26, 1973, Forbes was granted leave to proceed in forma pauperis for the Petition for Writ of Habeas Corpus dated November 14, 1972, filed with the Clerk of the United States District Court for the Eastern District of North Carolina. FORBES v. NORTH CAROLINA, No. 4216—Civil (E.D. N.C. February 28, 1973), dismissed by Memorandum Decision and Order, June 4, 1973.

On February 27, 1973, in the Wake County (N.C.) Superior Court, Ray Forbes filed a paperwriting which he entitled "Motion to Dismiss for Failure to Prosecute." In this paperwriting, Forbes schedules the instruments he has filed in a post conviction proceeding pending in the Wake County Superior Court. He advises in paragraph 3 that on February 5, 1973, he filed a "Motion for Application for Temporized Writ of Habeas Corpus" which was "honored" by the court on February 14, 1973. He subsequently filed a Motion to Dismiss for Failure to Prosecute. He also filed a paperwriting in the United States District Court for the Eastern District of North Carolina pursuant to 42 U.S.C. v 1983, FORBES v. BRASWELL and STRICKLAND, No. —Civil (E.D. N.C.), seeking damages from his attorneys. In that paperwriting he refers to having filed a "Civil Complaint to Institute Civil Action and Application for Permanent Injunction on or about December 12, 1972 in the Wayne County (N.C.) Superior Court. He also refers to the Motion for Speedy Trial which he filed on December 13, 1972 in the Wayne County Superior Court.